

Remarks

This Amendment is in response to the Office Action that issued in respect of the above application on April 17, 2008. Claims 1-31 are pending. Claims 14 and 15 have been editorially amended, Claims 27-31 have been withdrawn without prejudice, and new claims 32-37 have been added.

The Examiner has identified three (3) allegedly separate generic inventions::

(I) Claims 1-26, drawn to a flaviviral packaging construct and a method of producing flavivirus VLP's;

(II) Claims 27 and 28, drawn to a method of producing a recombinant protein; and

(III) Claims 29-31 directed to a method of immunizing a mammal.

In response, we elect invention (I) for substantive examination, with traverse.

Furthermore, the Examiner is of the view that each generic invention applies to three (3) separate species, as follows:

- 1) Kunjin virus replicons;
- 2) Dengue virus replicons; and
- 3) West Nile virus replicons.

In response, we elect species (1) of these alleged species for substantive examination, with traverse. It would appear that, given the present amendment, each claim is generic, to the extent any such claim is not inconsistent with the elected species, or is related to the elected species by way of dependency.

The rejection appears to be based upon a misunderstanding of the invention as claimed. The Examiner has identified generic inventions (I)-(III) on the ground that US 6,893,866 allegedly anticipates the "special technical feature" common to Inventions (I)-(III). According to the Examiner, this "special technical feature" is the flavivirus expression construct allegedly taught in US 6,893,866. To the contrary, the "special technical feature" of the present invention includes, in particular, the single translation product comprising C, prM and E structural proteins. This misunderstanding, in turn, appears to have also led the Examiner to erroneously identify the expression construct species 1-3 above.

Hence all of the claims of Inventions (I)-(III) and species 1-3 should be included in this application and are allowable for reasons supporting the allowable nature of Group I, and for others as well.

Moreover, MPEP 802.02 clearly provides that an election of species requirement is merely a type of restriction requirement. As such, the present Office Actions fails to meet *either* of the two fundamental requirements of *any* restriction requirement, as set forth in MPEP 808, namely, that it provide: (1) sufficient reasons why the inventions as claimed are either independent or distinct, and (2) reasons for insisting on restriction therebetween. Accordingly, the election of species requirement fails to meet the Office's own standards and should be withdrawn. In addition, the rules (37 CFR 1.141) provide that a reasonable number of species may be included in a single application, where, as here, other conditions are met.

In turn, it is to be understood that the election of species in the present response is for the sole purpose of the Examiner's initial search and examination, and that upon allowance of a generic claim, all species encompassed by that claim will then be examined. Therefore, Applicant respectfully requests that the search be conducted pursuant to Markush practice thereby providing for the inclusion of all species included in the generic claims and all claims dependent thereon.

Applicant has added new Claims 32-37, based upon the original claims, and each clearly within the Group I as identified by the Examiner. Support for new Claims 32-35 exists throughout the specification, including previous claims. Support for new Claim 36 exists, for instance, at page 12 lines 27-31, and for new Claim 37, for instance, at page 8 lines 10 and 11 and by page 13 lines 9-13.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested. The Commissioner is hereby authorized to charge any additional filing fees required to Deposit Account No. 061910.

Respectfully submitted,

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